

DECLARATION OF EMERGENCY

Office of the Governor Division of Administration Motor Vehicle Commission

General Provisions
(LAC 46:V.103, 117 and 119)

The Louisiana Motor Vehicle Commission (the "Commission") is exercising the emergency provisions of the Administrative Procedures Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 32:1251 et seq., adopts the following Emergency Rule, effective November 9, 2009. It shall remain in effect for 120 days or until this Rule takes effect through the normal promulgation process, whichever comes first.

The Louisiana Motor Vehicle Commission finds it necessary to adopt this Rule to implement the provisions of R.S. 32:1268.2. In the country's current economic condition, manufacturers of motor vehicles and recreational products are filing for bankruptcy, discontinuing lines, and ceasing to do business at an alarming rate making it unlawful under state law for dealers to sell their new inventory. R.S. 32:1268.2 was enacted by the legislature to allow previously franchised motor vehicle and recreational product dealers to continue to be licensed under circumstances where the manufacturer is in bankruptcy, is no longer in business, or has terminated in line. This Rule will allow motor vehicle and recreational product dealers to dispose of their new inventory under these circumstances.

The provisions of R.S. 32:1254(B)(9) and (E)(7) set forth insurance requirements for motor vehicles and recreational product dealers to be granted a license by the commission. The provisions were originally adopted at a time the commission primarily licensed new motor vehicle dealers. In July, 2009 the legislature transferred the licensing of recreational product dealers to the commission. The result of that legislation is that the requirements for garage liability and liability insurance do not necessarily fit the insurance needs of recreational product dealers. This Rule will require motor vehicle and recreational product dealers to obtain insurance coverage as determined by the dealer and its insurance agent to provide the proper coverage necessary to protect the dealers and consumers of this state.

R.S. 32:1254(A)(4) requires that a person who engages in business as a distributor or wholesaler in this State must be licensed by the commission. By definition a distributor or wholesaler, R.S. 32:1252(8), distributes, in whole or in part, sells or distributes motor vehicles, new, re-manufactured, re-conditioned or re-built motor vehicle motors or recreational products to motor vehicle or recreational product dealers. Their distribution is of products manufactured or re-built by a third party. In all cases the commission, when issuing a license to persons offering for sale the product of another, requires the applicant to provide a copy of its franchise allowing such representation under the provisions of R.S. 32:1254(C). This Rule will make it clear that a distributor or wholesaler must attach a copy of its franchise with the manufacturer or other third party whose product it will offer for sale or distribution to licensees of the commission in this state to its application for license.

R.S. 32:1261(1) sets forth acts which shall be a violation of R.S. 32:1251 et seq. by a manufacturer, distributor,

wholesaler, distributor branch, factory branch, convertor or officer, agent, or other representative of these when asserted against any licensee of the commission. Because of the original jurisdiction of the commission the subparagraphs of R.S. 32:1261 refer only to motor vehicles or motor vehicle dealers. However, as a result of the transfer of recreational products to the commission, and the application of Section 1261 to licensees of the commission, all subsections of Section 1261 apply to recreational products and recreational product dealers. This Rule will make it clear that all references to motor vehicles or motor vehicle dealers in this Section apply to recreational products and recreational product dealers.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part V. Automotive Industry

Subpart 1. Motor Vehicle Commission

Chapter 1. General Requirements

§103. Application for License

A. All applications for license under the Law shall include evidence that the applicant has such liability protection covering its place of business and its operation that complies with the financial responsibility laws of the state of Louisiana and as determined by the applicant and its insurance agent that are necessary to provide coverage to the place and nature of the business sought to be licensed to protect the applicant and the consumers of this state.

B. All applications for license as a distributor or wholesaler shall include a copy of its franchise with the person, licensed by the commission, whose product it will offer for sale to the licensees of the commission in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 34: Adopted by the Department of Commerce, Motor Vehicle Commission, October 11, 1960, filed with the Office of the State Register August 14, 1974, re-promulgated April 10, 1975 to be effective June 9, 1975, amended by the Office of the governor, Division of Administration, Motor Vehicle Commission, LR 36:

§117. Manufacturer Termination of Franchise:

Liquidation of New Vehicle Inventory:

Exception

A. If the termination, cancellation, or nonrenewal of a licensee's franchise by the manufacturer, distributor, or factory branch is the result of the termination, elimination, or cessation of a motor vehicle or recreational product line (a "vehicle"), whether by bankruptcy, closure of its business or otherwise (their "termination"), the license issued by the commission may remain in effect or be renewed at the discretion of the commission under the following circumstances:

1. the vehicle(s) was acquired in the ordinary course of business as a new vehicle by a person licensed to sell that vehicle;

2. the termination is not a result of the revocation by the commission of the licensee's license or the licensee's conviction of a crime;

3. the vehicle is held in the inventory of the licensee on the date of the termination;

4. the vehicle is sold by the licensee within six months of the date the termination unless this period is extended upon application by the licensee in the commission's discretion;

5. the commission's discretion to allow the licensee to continue in effect does not entitle a licensee whose franchise agreement has been terminated, canceled, or rejected to continue to perform warranty service repairs or continue to be eligible to offer or receive consumer or dealer incentives offered by the manufacturer, distributor, or factory branch.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Motor Vehicle Commission, LR 36:

§119. Unauthorized Acts

A. All references to violations of the law in R.S. 32:1261(1) to motor vehicles or motor vehicle dealers shall also apply to recreational products or recreational product dealers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Motor Vehicle Commission, LR 36:

Lessie A. House
Executive Director

0911#107